APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 06-5529

[Filed October 30, 2006]

BERLE E. GABBARD,
Plaintiff-Appellant,

v.

FIRST TENNESSEE BANK,
Defendant-Appellee,

CITY OF KNOXVILLE; JOHN DOES,
6 unknown officers of the Knoxville
City Police Department;
UNIVERSITY OF TENNESSEE
MEDICAL CENTER, Psychological Division,
Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

ORDER

Before MARTIN and COOK, Circuit Judges; BERTELSMAN, District Judge.*

Berle E. Gabbard, a pro se Tennessee resident, appeals a district court judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. §1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and declaratory relief, Gabbard sued First Tennessee Bank; the City of Knoxville, Tennessee; police officers of the Knoxville police department; the University of Tennessee Medical Center; and an unknown employee of the medical center. In July 2004, Gabbard entered First Tennessee Bank to withdraw several thousand dollars. To make the withdrawal, he presented his "First Resource" business card to a bank employee. When he was informed by the bank that he could not complete his request with that card, Gabbard went to his car to retrieve a canvas bag which contained additional credit cards. Upon returning to the bank, Gabbard was searching through his bag when he was approached by two Knoxville police officers. Gabbard alleged that the police were called by bank employees who were not directly involved with his transaction and "had grossly misjudged the situation and overreacted to it." Gabbard alleged that the police and bank employees expressed

---

* The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

their concern about detaining Gabbard for substance testing or further mental evaluation. Gabbard objected to the evaluation, but voluntarily went to the hospital for observation so as to resolve the matter. Gabbard stated that he was detained against his will at the medical center and was subjected to medical testing and experimental treatment in violation of his constitutional rights.

The district court dismissed the complaint against the bank pursuant to Fed. R. Cir. P. 12(b)(6) for failure to state a claim. Gabbard has only appealed the district court's dismissal of his allegations against the bank. Therefore, the bank is the only proper party before the court.

In his timely appeal, Gabbard argues that the district court erred in dismissing his complaint against the bank. He also asserts that the district court erred by not allowing him to amend his complaint.

Gabbard's complaint was dismissed pursuant to Rule 12(b)(6) because the district court determined that Gabbard had failed to state a claim upon which relief can be granted. The court conducts de novo review of a dismissal under Rule 12(b)(6). *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 511-12 (6th Cir. 2001). In reviewing the motion, the court construes the complaint in the light most favorable to the plaintiff, accepts all the factual allegations as true, and determines whether the plaintiffcan undoubtedly prove no set of facts in support of his claim that would entitle him to relief. *Id.* at 512. The court need not a.eeept as true legal conclusions or unwarranted factual inferences. *Morgan v. Church's Fried Chicken,* 829 F.2d 10, 12 (6thCir. 1987).

The district court properly dismissed Gabbard's complaint against the bank, as he failed to establish that the bank was

acting under color of state law. To state a claim under §1983, a plaintiff must allege two elements: 1) the defendant was acting under color of state law, and 2) the offending conduct deprived the plaintiff of rights secured under federal law. *Mezibov v. Allen,* 411 F.3d 712, 716-17 (6th Cir. 2005), *cert. denied,* 126 S. Ct, 1911 (2006). To satisfy the color-of-state-law requirement, the bank's action must be fairly attributable to the state. *Rendell-Baker v. Kohn,* 457 U,S. 830, 838 (1982). Although private parties may jointly engage with state actors in prohibited activities which can be deemed acts under color of state law, *Adickes v. S. H. Kress & Co.,* 398 U.S. 144, 152 (1970), complaints by citizens to the police are insufficient to convert the private party into a state actor. *Collins v. Womancare,* 878 F.2d 1145, 1155 (9th Cir. 1989).

The facts establish that the bank employees called the police as they were concerned that Gabbard's behavior indicated that he was under the influence of drugs or suffered from a mental impairment. The fact that the bank employees called the police out of concern due to Gabbard's behavior does not make the activities of the bank employees attributable to the state. *Rendell-Baker,* 457 U.S. at 838; *Collins,* 878 F.2d at 1155. Therefore, the district court properly dismissed Gabbard's allegations against the bank for failure to state a claim under §1983.

Gabbard also contends that the district court erred by not allowing him to amend his complaint. Gabbard sought to add the following amendment to his complaint: "The Defendant Bank, arbitrarily determining that Plaintiff requireddetention and substance or psychological evaluation, combined with other Defendants to summon police and an ambulance to employee official power in deprivation of Plaintiff's rights." A district court's denial of a motion to amend a complaint is reviewed for an abuse of discretion. *Wade v. Knoxville Utils.*

Bd., 259 F.3d 452, 459 (6th Cir. 2001); *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000). However, when the denial is based upon the district court's legal conclusion that the proposed amendment would be futile, the decision is reviewed de novo. *Wade,* 259 F.3d at 459; *Parry,* 236 F.3d at 306. A reviewing court finds an abuse of discretion when it reaches a firm and definite conviction that the trial court committed a clear error in judgment. *Cincinnati Ins. Co. v. Byers,* 151 F.3d 574, 578-79 (6th Cir. 1998).

After a responsive pleading has been filed, leave to amend must be freely given when justice requires. Fed. R. Civ. P. 15(a), *Foman v. Davis,* 371 U.S. 178, 182 (1962). Nevertheless, leave to amend should be denied if the amendment is brought in bad faith, for dilatory purposes, results in undue delay or prejudice to the party, or would be futile. *Crawfordv. Roane,* 53 F.3d 750, 753 (6th Cir. 1995).

The record shows that the bank moved to dismiss Gabbard's complaint for failure to state a claim on March 22, 2005. Gabbard responded to the motion on May 16, 2005. The district court subsequently granted the bank's motion to dismiss on November 4, 2005. It was not until after the bank was dismissed as a party that Gabbard attempted to amend his complaint on November 14, 2005. The district court denied the motion to amend on March 31, 2006, finding that the amendment was futile. Given that Gabbard had attempted to amend his complaint only after the bank's motion to dismiss was granted, and given that the amendment fails to establish that the bank's actions could be deemed to occur under color of state law, the district court did not err in denying Gabbard's motion to amend his complaint.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ _____

Leonard Green
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

No. 3:05-CV-114
(Phillips)

[Filed March 31, 2006]

BERLE E. GABBARD,)
Plaintiff,)
)
v.)
)
FIRST TENNESSEE BANK, et al.,)
Defendants)
)

MEMORANDUM AND ORDER

This matter is before the court on the following motions filed by the parties: (1) plaintiff's motion for a scheduling conference [Doc. 17]; (2) plaintiff's motion for reconsideration and motion to amend complaint [Doc. 20]; and (3) defendant First Tennessee Bank's motion for entry of a judgment order [Doc. 23].

I

Plaintiff has moved the court for a scheduling conference pursuant to Rule 26, Federal Rules of Civil Procedure. It appears so the court that the defendants have filed answers to the complaint herein and that a scheduling conference is appropriate. Accordingly, plaintiff's motion [Doc. 17] is **GRANTED**, and the clerk is **DIRECTED** to set this matter for a scheduling conference.

Next, plaintiff has moved the court to reconsider its order dismissing First Tennessee Bank as a defendant in this case, and for leave to amend his complaint [Doc. 20]. Defendant First Tennessee Bank has Bed a response in oppositlon to the motion [Dec. 22].

Plaintiff's complaint alleges that he entered First Tennessee Bank on July 16, 2004 to conduct some personal business, A bank employee called police and expressed concern about plaintiffs mental state. The complaint further states that although plaintiff voiced his objection, he volunteered to be transported to a medical facility. Plaintiff was transported to UT Medical Center, where plaintiff alleges he was subjected to medical tests and experimental treatment in violation of his constitutional rights.

To state a cause of action under 42 U.S.C. §1983, plaintiff must allege the "deprivation of rights secured by the United States Constitution or a federal statute by a person who is acting under color of state law. *Spadafore v. Gardner,* 330 F.3d 849 (6th Cir. 2003). The court dismissed First Tennessee Bank as a defendant in this action because plaintiff's complaint is insufficient, as a matter of law; to establish that the Bank acted under color of law. The only allegation that the Bank had any connection with any

governmental authority is the allegation that employees of the Bank summoned the police to the Bank on July 16, 2004, Federal courts have held that merely complaining to the police does not convert a private party to a state actor. *See Collins v. Womancare*, 878 F.2d 1145, 1154 (11th Cir. 1989); *Lee v. Brown Group Retail, Inc.*, 2003 WL 22466187 (D.Kan. 2003); *Benavidez v. Gunnell,* 722 F.2d 615, 618 (10th Cir. 1983); *Butler v. Goldblatt Bros Inc.*, 589 F.2d 323, 327 (7th Cir. 1978). Accordingly, plaintiff's motion for reconsideration [Dec. 20] is without merit and is hereby **DENIED**.

Plaintiff has also moved for leave to amend his complaint to add the following allegation: "The Defendant Bank, arbitrarily determining that Plaintiff required detention and substance or psychological evaluation, combined with other Defendants to summon police and an ambulance to employ official power in deprivation of Plaintiff's rights." Although leave to amend pleadings shall be freely given when justice so requires, F.R.C.P. 15, leave may be denied when the amendment is futile. *Robinson v. Michigan Console Gas Co.,* 918 F.2d 579, 591 (6th Cir. 1990). General a!legations of cooperation between pnvate individuals and government agencies do not make out a claim of action taken under color of law. In particular, the nature of the relationship or cooperation between the state and private parties must be pled in detail. *Glaros v. Perse,* 628 F.2d 679 (1st Cir. 1980); *Colburn v. Upper Darby Township,* 883 F.2d 663 (3rd Cir. 1988).

Plaintiff's complaint contains no facts in support of his allegation that First Tennessee Bank conspired with the other defendants to deprive him of his civil rights. The Bank's complaining about plaintiffs presence to a police officer who, acting within the scope of his statutory duties, detained

plaintiff after questioning him, does not, without more, constitute state action for which the Bank can be held responsible. Plaintiff's proposed amendment fails to state specific facts alleging any further collusion, joint course of action, or other nexus with the police officers to demonstrate that the Bank's employees acted under color of law. Because the court conciudes that the proposed amendment fails to state a cause of action against First Tennessee Bank, the court finds the proposed amendment would be futile. Accordingly, plaintiff's motion to amend complaint [Dec. 20] is **DENIED**.

III

Defendant First Tennessee Bank has moved for entry of a judgment order under F.R.C.P. 54(b) [Dec. 23]. Plaintiff opposes the motion [Dec. 25].

> Rule 54(b), Federal Rules of Civil Procedure provides:
>
> When more than one claim for relief is presented in an action ... or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon express determination that there is no just mason for delay and upon an express direction for entry of judgment ....

In the instant case, the court's judgment order dismissing First Tennessee Bank is a final adjudication of the Bank's liability to plaintiff; plaintiff's claims against the Bank are different from his claims against the City of Knoxville and UT Medical Center and dismissal of the Bank would not affect the remaining claims; and entry of a judgment order would promote judicial economy. Accordingly, I find that First

Tennessee Bank is entitled to a judgment order under Rule 54(b) and the Bank's motion [Dec. 23] is hereby GRANTED.

Conclusion

For the reasons stated above, plaintiff's motion for a scheduling conference [Doc, 17] is **GRANTED**; plaintiff's motion to reconsider and.motion to amend complaint [Doc. 20] is **DENIED**; and defendant First Tennessee Bank's motion for entry of a judgment order [Doc. 23] is **GRANTED**.

ENTER:

s/ Thomas W. Phillips
United States District. Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

No. 3:05-CV-114
(Phillips)

[Filed March 31, 2006]

BERLE E. GABBARD,	)
Plaintiff,	)
	)
v.	)
	)
FIRST TENNESSEE BANK, et al.,	)
Defendants	)
	)

JUDGMENT ORDER

For the reasons set forth in the memorandum and order filed this day with the clerk, plaintiff's cause of action against First Tennessee Bank is hereby **DISMISSED**. This order constitutes a **FINAL JUDGMENT** as to this defendant, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips
United States District. Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

No. 3:05-CV-114
(Phillips)

[Filed November 4, 2005]

BERLE E. GABBARD,
Plaintiff,

v.

FIRST TENNESSEE BANK, et al.,
Defendants

MEMORANDUM OPINION

Plaintiff has filed his civil rights action, pursuant to 42 U.S.C. §1983 alleging that defendants violated his constitutional rights when he was unlawfully detained and transported to the University of Tennessee Medical Center for evaluation and medical treatment against his wishes. Defendant First Tennessee Bank (the Bank) has filed a motion to dismiss the claim against it for failure to state a claim upon which relief can be granted. Specifically, the Bank asserts that it is a public corporation with the status of a private citizen and it was not acting under Color of law; thus it may not be

sued for violations of §1983, which expressly requires that the defendant act under color of law. For ths reasons which follow, defendant's motion to dismiss will be granted.

Plaintiff's complaint states that on July 16, 2004, plaintiff entered the Bank to withdraw severat thousand dollars in cash, and presented his "First Resource" business card to a bank employee. Upon being told that the Bank couid not comply with his request, plaintiff stepped out to his car to retrieve a canvas bag which contained other credit cards. Upon returning inside the Bank, plaintiff was searching through his canvas bag when approached by two officers or the Knoxville Police Department. Plaintiff states that the "police had been summoned by employees of the Bank who, not directly involved with the plaintiff's transaction, had grossly misjudged the situation and overreacted to it."

The complaint goes on to state that the police officers and employees of the Bank expressed concern about detaining plaintiff for substance testing or other evaluation. Plaintiff voiced his objection, but volunteered to go to a medical facility for evaluation in order to resolve the matter peaceably. Plaintiff walked aboard a waiting ambulance and was transported to the University of Tennessee Medical Center. The complaint alleges that plaintiff was detained against his will at UT Medical Center and subjected to medical tests and experimental treatment in violation of his constitutional rights.

The Bank has moved for dismissal of plaintiff's claims against it for failure to properly plead state action, or action under color of law, as required for claims under 42 U.S.C. §1983.

Analysis

A motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, requires the court to construe the complaint in the light most favorable to the plaintiff, accept all the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Meador v. Cabinet for Human Resources*, 902 F.2d 474, 475 (6th Cir.) *cert. denied,* 498 U.S. 867 (1990). The court may not grant such a motion to dismiss based upon a disbelief of a complaint's factual allegations. *Lawler v. Marshall,* 898 F.2d 1198, 1198 (6th Cir. 1990); *Miller v. Currie,* 50 F.3d 373, 377 (6th Cir. 1995) (noting that courts should not weigh evidence or evaluate the credibility of witnesses). The court must liberally construe the complaint in favor of the party opposing the motion. *Id.* However, the complaint must articulate more than a bare assertion of legal conclusions. *Scheid v. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434 (6th Cir. 1988), "[The] complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Id.*. (citations omitted).

To state a cause of action under 42 U.S.C. §1983, plaintiff must allege the "deprivation of rights secured by the United States Constitution or a federal statue by a person who is acting under color of state law." *Spadafore v. Gardner,* 330 F.3d 849 (6th Cir. 2003). Whether state action is present in a case involving private parties depends on whether the conduct allegedly causing the deprivation of a federal right can be fairly attributable to the state. *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 937 (1982). Although the court is required to read *pro se* complaints liberally, *(see Haines v. Kerner,* 404 U.S. 519, 520-21 (1972)), a plaintiff must plead

specific facts backing up his claims of civil rights violations. The Bank asserts that it is a public corporation with the status of a private citizen. At the time of the events alleged in the complaint, it was not acting under color of state law; therefore, it cannot be sued for violations of §1983, which expressly requires that a defendant act under color of state law.

Although it is true that private parties jointly engaged with state or local officials in prohibited conduct can be said to act under color of state law, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,152 (1970), general allegations of cooperation between private individuals and government agencies do not make out a claim of action taken under color ot law. In particular, the nature of the relationship or cooperation between the state and private parties must be pled in detail. *Glaros v. Perse,* 628 F.2d 679 (1st Cir. 1980); *Colburn v. Upper Darby Township,* 883 F.2d 663 (3rd Cir. 1988). The Sixth Circuit has noted that the Supreme Court has developed three tests for determining the existence of state action in a particular case: (1) the public function test, (2) the state compulsion test, and (3} the symbiotic relationship or nexus test. *Romanski v. Detroit Entertainment, LLC.* ____ F.3d __ _, 2005 WL 2811242 (6th Cir. (Mich)) (citations omitted).

In the instant case, the only ailegation that the Bank has any connection with any governmental authority is the allegation that employees of the Bank summoned the police to the Bank on July 16, 2004. That allegation is insufficient, as a matter of law, to establish that the Bank acted under color of law. Federal courts have held that merely complaining to the police does not convert a private party to a state actor. *See Collins v. Womancare,* 878 F.2d 1145, 1154 (11th Cir. 1989); *Lee v. Brown Group Retail, Inc.,* 2003 WL 22466187 (O.Kan. 2003); *Benavidez v. Gunnell,* 722 F.2d 615, 618

(10th Cir. 1983); *Butler v. Goldblatt Bros Inc.*, 589 F.2d 323, 327 (7th Cir. 1978). The Bank's complaining about plaintiff's presence to a police officer who, acting within the scope of his statutory duties, detained plaintiff after questioning him, does not, without more, constitute state action for which the Bank can be held responsible. Plaintiff's complaint fails to state specific facts alleging any further collusion, joint course of action, or other nexus with the police officers to demonstrate that the Bank's employees acted under color of law. Thus, the court concludes that the Bank's actions were not taken under color of law, and plaintiff's §1983 claim must be dismissed against First Tennessee Bank for failing to plead facts sufficient to support a §1983 action against the Bank.

Conclusion

For the reasons stated above, the motion to dismiss filed by First Tennessee [Doc. 10] is **GRANTED**, and First Tennessee Bank is hereby **DISMISSED** as a defendant in this action.

ENTER:

/s/_____
Thomas W. Phillips
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

Civ. Action No. 3:05-CV-114

[Filed April 7, 2006]

BERLE E. GABBARD, Plaintiff,	)
v.	)
FIRST TENNESSEE BANK, et al., Defendants	)

NOTICE OF APPEAL

Comes now the Plaintiff-Appellant, Berle E. Gabbard, *pro se*, and pursuant to Federal rules of Appellate Procedure (FRAP), Rule 3(a) and 4(a), hereby gives notice of his desire to appeal to the U. S. Sixth Circuit Court of Appeals from the Final Judgment entered March 31, 2006 by the United States District Court, dismissing the Plaintiff's causes of action against the Defendant First Tennessee Bank.

Respectfully submitted,

/s/ _____

BERLE E. GABBARD
3920 Chapman Highway
Knoxville, TN 37920
Phone: (228) 369-0904

PLAINTIFF-APPELLANT, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal has been served on Counsel for the Defendants by depositing true and correct copies of same in the U.S. Mail, postage prepaid, addressed to Hon. Jay A. Garrison, Holifield & Associates, P.C., 8351 E. Walker Springs Lane, suite 303, Knoxville, TN 37923-3138; Hon. Stephen C. Daves, O'Neil, Parker & Williamson, P.O. Box 217, Knoxville, TN 37901-0217; Hon. Ronald E. Mills, Senior City Attorney, 400 Main Avenue, Suite 699, P.O. Box 1631, Knoxville, TN 37901, this the 7th day of April, 2006.

/s/ _____

BERLE E. GABBARD

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 06-5529

[Filed November 21, 2006]

BERLE E. GABBARD
Plaintiff - Appellant

v.

FIRST TENNESSEE BANK
Defendant - Appellee

CITY OF KNOXVILLE; JOHN DOES,
6 unknown officers of the Knoxville City Police
Department; UNIVERSITY OF TENNESSEE
MEDICAL CENTER, Psychological Division
Defendants

MANDATE

Pursuant to the court's disposition that was filed 10/30/2006, the mandate for this case hereby issues today.

A True Copy.

COSTS: NO COSTS

Attest:

/s/_____
Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 538
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

Tel: (513) 564-7000
www.ca6.uscourts.gov

November 22, 2006

Mr. Berle E. Gabbard
3920 Chapman Highway
Knoxville, TN 37920

RE: Case No. 06-5529
Gabbard v. First Tennessee Bank

Dear Mr. Gabbard:

We have received the petition for rehearing en banc you submitted in the above case.

Pursuant to Rule 40(a)(1), Federal Rules of Appellate Procedure, a petition for rehearing was due on November 13, 2006. The petition was received on November16, 2006. Therefore, the.petition is untimely and is not accepted for filing. You will not receive any additional correspondence regarding the filing of a petition for rehearing in this case.

Very truly yours,

/s/ _____
Beverly L. Harris
Deputy Clerk

cc: Mr. Jay A. Garrison

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
U.S. POST OFFICE & COURTHOUSE BUILDING
CINCINNATI, OHIO 45202-3988

JANICE E. YATES
CHIEF DEPUTY CLERK

TELEPHONE
(513) 564- 7072

December 6, 2006

Berle E. Gabbard
3920 Chapman Highway
Knoxville, TN 37920

RE: Case No. 006-5529, *Gabbard v. First Tennessee Bank*

Dear Mr. Gabbard,

The clerk's office received a "Motion for Relief from Failure to File Appellant's Petition for Rehearing" which challenged the calculation of the 14-day time period in which a petition for rehearing may be filed. The court's calculation of time and its determination that time had expired prior to the clerk's office receiving a petition for rehearing was correct for the reasons that follow in this letter.

The 14-day time period begins to run "after entry of judgment," according to Rule 40. The phrase "entry of judgment" means just that; rehearing time is not calculated according to when the court's decision is received. That

means that the additional three-days for mailing provision of Rule 26(c) by its terms does not apply to a petition for rehearing.

All appellate review which the rules permit has taken place in this appeal and the case is closed. If you want additional review, you will need to seek it from the United States Supreme Court by filing a petition for writ of certiorari.

Sincerely yours,

/s/_____
Janice E. Yates
Chief Deputy Clerk

APPENDIX H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

Civ. Action No. _____

[Filed February 28, 2005]

BERLE E. GABBARD, Plaintiff	)
v.	)
FIRST TENNESSEE BANK, CITY OF KNOXVILLE, TENNESSEE; SIX UNKNOWN OFFICERS OF THE KNOXVILLE POLICE DEPARTMENT (In their Individual and Official Capacities); THE UNIVERSITY OF TENNESSEE MEDICAL CENTER (Psychological Division); JANE DOE (An Employee of the University of Tennessee Medical Center's Psychological Division), Defendants	)

COMPLAINT

This is a Civil Action in which the Plaintiff seeks a jury trial, declaratory judgment, damages, costs, reasonable attorney fees and all other just relief upon Defendants'

violation of Plaintiff's federally protected rights under the Constitution and Laws of the United States and the Constitution and Laws of the State of Tennessee.

JURISDICTION

This Court hosts jurisdiction pursuant to 28 U.S.C. §§1331 and 1343(a)(3) and (4) to redress deprivations under color of State law of rights secured by the U.S. Constitution, as well as pendent jurisdiction owing to violations of State law.

PARTIES

1. Plaintiff Berle E. Gabbard is a private citizen, and his address is 3920 Chapman Highway, Knoxville, Tennessee 37920.

2. The Plaintiff, Berle E. Gabbard, is proceeding on the instant cause of action, pro se.

3. Defendant First Tennessee Bank is a financial institution located at 4416 Chapman Highway, Knoxville, Tennessee 37920, and Service Agent for the Defendant Bank is Ms. Lenore Breson, 165 Madison Avenue, 3rd Floor, Memphis, Tennessee 38103.

4. Defendant City of Knoxville Tennessee is a municipality, and Defendants Six Unknown Officers of the Knoxville Police Department are uniformed officers of the municipality's principal law-enforcement agency.

5. Mayor Bill Haslam, City-County Building, 400 Main St., Knoxville, TN 37902, is Service Agent for the

Defendant Municipality and Defendants Six Unknown Police Officers.

6. The Defendant University of Tennessee Medical Center (Psychological Department) is a medical education/treatment department of the Defendant institution, and its Service Agent is General Counsel's Office, University Health System, 1520 Cherokee Trail, Suite 330, Knoxville, Tennessee 37920.

7. Defendant Jane Doe is an employee of the Defendant University of Tennessee Medical Center's Psychological Department, and the Agent for Service on behalf of Defendant Jane Doe is General Counsel's Office, University Health System, 1520 Cherokee Trail, Suite 330, Knoxville, Tennessee 37920.

STATEMENT OF CLAIM

8. The Plaintiff, Berle E. Gabbard, is a Knoxville businessman, with business interests in Alabama, Kentucky, Mississippi and Tennessee.

9. Over the years, the Plaintiff has transacted much of his business through Ms. Linda Boyd, an officer of the Defendant First Tennessee Bank (the Bank).

10. On July 16, 2004, the Plaintiff entered the Bank, intent upon securing several thousand dollars in cash, and presented his First Tennessee "First Resource" business card to Ms. Boyd.

11. Upon being told that the Bank could not comply with his request, the Plaintiff stated that there was nothing wrong with the card, explaining that he had paid $50.00 to

extend the life of his previous card from its 2003 expiration date to the 2006 expiration date of the card in question.

12. Ms. Boyd went to check the card again--a card on which the Plaintiff would receive $10,000.00 from the Cumberland Valley National Bank, in Corbin, Kentucky on July 24, 2004.

13. Knowing that he had other valid credit cards in a small canvas bag, the Plaintiff stepped out to his car to retrieve the bag. Upon returning inside the Bank, the Plaintiff was searching through the bag when at least two officers of the Knoxville Police Department arrived.

14. The police had been summoned by employees of the Bank who, not directly involved with the Plaintiff's transaction, had grossly misjudged the situation and overreacted to it.

15. The Plaintiff, shocked and embarrassed, quickly explained that he was searching through his business cards, but the younger of the two officers continued to approach in a manner indicating an intent to restrain the Plaintiff.

16. Stating to the officers that he was trying to protect their jobs, the Plaintiff pointed out that there was absolutely no reason to take him into custody.

17. When the older of the two officers called off the younger officer, saying to him "he's right," a quandary ensued as to how to resolve the matter.

18. The police officers and employees of the Bank expressed concern about detaining the Plaintiff for substance

testing or other evaluation, and the Plaintiff, voicing his objection for the record, volunteered to go to a medical facility for evaluation in order to resolve the matter peaceably.

19. After turning over certain of his personal properties to the older officer for safe keeping, the Plaintiff walked aboard a waiting ambulance.

20. No formal complaint was filed and the Plaintiff was never arrested, read his Miranda rights, hand-cuffed nor in any way restrained by the police or the ambulance personnel.

21. The ambulance drove directly to the Psychological Department of the University of Tennessee Medical Center (Hospital and/or Medical Center) where the Defendant Six Unknown Officers of the Knoxville Police Department (Officers) were waiting when the Plaintiff emerged from the ambulance.

22. With the Defendant Police Officers crowding around him, the Plaintiff walked directly to the nearest men's restroom as the Defendant Police Officers moved to block the door.

23. As the Plaintiff stood before a urinal relieving his bladder, a young, female employee of the Defendant University of Tennessee Medical Center (Psychological Division) entered the rest room and, slipping up behind the Plaintiff with a cup in one hand, thrust her arm between the Plaintiff's legs in an effort to secure a urine sample.

24. The action of Defendant Jane Doe whom the Plaintiff took to be a "Candy Striper," but who seemed to be

in charge, startled and humiliated the Plaintiff, and he demanded to know what she was doing, asking if she was a pervert.

25. With the Defendant Six Unknown Police Officers crowding around to block and control his movement, the Plaintiff was herded to an area where Defendant Jane Doe and other staff persons of the Defendant Hospital' s Psychological Department announced their intention to perform unspecified tests on the Plaintiff.

26. The Plaintiff thereupon stated "I don't want any tests" and asked "do I still have to do it?" When the Defendant Hospital's staff and the Defendant Police Officers answered "yeah," the Plaintiff again stated "Make it a matter of record that I refuse this. Do I still have to do this?"

27. When again the answer was "yeah," the Plaintiff, unwilling to risk physical injury in a futile struggle, opened his arms in a gesture of resignation and surrender.

28. The Plaintiff was strapped down to a hospital bed with both arms tightly secured and injected with unknown drugs that rendered the Plaintiff unconscious.

29. Without a formal complaint, warrant of arrest, arrest, court order, consent by the Plaintiff or any relative, the Defendants reduced Plaintiff's rights to the level accorded to Dr. Josef Mengele's "children," and for the next seven days the Plaintiff was subjected to experimental medicine.

30. The Defendant Hospital, lacking knowledge of the Plaintiff's state of health and/or his tolerance or lack of tolerance towards specific drugs, substances and treatments,

subjected the plaintiff to unknown drugs and unspecified tests against the Plaintiff's expressed will.

31. After being unconscious or having little or no awareness of himself, his location and his condition for some two or three days, the Plaintiff awakened to find that his feet were grotesquely swollen.

32. In the first day of detention, the Defendant Hospital had apparently performed a spinal tap, drawing spinal fluid from the Plaintiff, and in addition to the catheter invading the Plaintiff's bladder, unknown drugs were being administered, not only by IV, but via needles inserted directly into the Plaintiff's belly and stomach.

33. Throughout the seven days of his forced detention, the Plaintiff was isolated in an intensive-care section of the Psychological Ward and kept under 24-hour surveillance.

34. Fearing the loss of his feet and prolonged detention, the Plaintiff dropped all hints of resentment, became cheerful and, remarking to one staff member that he had never received better treatment, feigned his delight at the much-needed rest.

35. The Plaintiff had arrived at the Defendant Hospital on July 16 wearing a pair of Size 9½ Italian loafers, but upon his release on July 23, his feet were horribly swollen to almost twice their size, and the Plaintiff had to conceal them from hospital staff in a pair of Size 12 wrap-around house shoes.

36. Shortly after his release from the Defendant Hospital, the Plaintiff passed out and was unconscious for some seven hours. Blackouts, humiliation and fear for the loss

of his feet have taken a significant toll on the Plaintiff's emotional well-being.

37. Since his discharge, the Plaintiff has suffered from severe pain in his lower legs and feet and massive swelling that resulted in his toe cracking open. The Plaintiff has also suffered pain in his back, severe weakness and symptoms closely mimicking muscular dystrophy.

38. As a direct result of the forced detention and treatment caused and/or carried out by the Defendants, the Plaintiff has been forced to use canes and crutches and has sometimes been unable to get upright from a seated or reclining position without assistance from others.

39. Subsequent to the instant forced detention and experimental treatment, the Plaintiff has been bombarded with fraudulent medical bills, to date, totaling more than $3500.00.

CLAIMS

(First Cause of Action)

40. The actions of Defendant First Tennessee Bank, the Defendant Municipality and the Defendant Six Unknown Police Officers, set forth in numerical paragraphs eight (8) through thirty-nine (39), violated 42 U.S.C. §1983 in their illicit combination to suspend the Plaintiff's liberty, thereby denying the Plaintiff due process, fundamental fairness and equal protection, contrary to Amends. 4, 5, and 14 of the U. S. Constitution and Article 1, §8 of the Tennessee Constitution.

41. As reflected by the fact that the two uniformed officers (unnamed as Defendants) found no justification for

detaining the Plaintiff, the Plaintiff was doing nothing illegal. Seeking only to obtain services for which he had duly contracted with the Bank, Plaintiff, acting within his rights, was searching a small bag that contained nothing more sinister than credit cards. The Defendant Bank, in combination with the Defendant Municipality and the Defendant Police Officers, acted arbitrarily and without probable cause to secure the detention and pharmacological and/or psychological evaluation of the Plaintiff.

(Second Cause of Action)

42. Acting under color of State law, the Defendants First Tennessee Bank, City of Knoxville Tennessee, Six Unknown Officers of the Knoxville Police Department, University of Tennessee Medical Center (Psychological Department) and Jane Doe, set forth in numerical paragraphs eight (8) through thirty-nine (39), forced arbitrary and illegal constraints upon the Plaintiff that resulted in his gross humiliation, invasion of his privacy and personal dignity, forced detention and forced treatment, in violation of 42 U.S.C. §1983, Amends. 4, 5 and 14 of the U. S. Constitution and Article 1, §8 of the Tennessee Constitution.

43. The Defendant Bank's unwarranted call to the Knoxville Police Department and the arbitrary and unqualified assessment that the Plaintiff required restraint and/or pharmacological or psychological evaluation was the proximate cause of the Defendant Municipality's involvement and of the Defendant Six Unknown Officers' unlawfully restricting the Plaintiff's liberty and conducting him into the custody of the Defendant Hospital and Defendant Jane Doe.

(Third Cause of Action)

44. In the absence of a court order or any lawful process, Defendants First Tennessee Bank, City of Knoxville Tennessee Six Unknown Officers of the Knoxville Police Department, University of Tennessee Medical Center (Psychological Department) and Jane Doe combined to subject the Plaintiff to illegal detention and malpractice via unwanted, experimental treatment as set forth in numerical paragraphs eight (8) through thirty-nine (39), in violation of 42 U.S.C. §1983, Amends. 4, 5 and 14 of the U.S. Constitution and Article 1, §8 of the Tennessee Constitution.

45. Pursuant to the Defendant Bank's arbitrary and unqualified diagnosis that the Plaintiff required detention and pharmacological or psychological evaluation, the Defendant City of Knoxville Tennessee, failing to train, supervise and/or restrain its Defendant Six Unknown Officers, permitted them to act arbitrarily to provide the forced restraint that subjected the Plaintiff to the humiliating, unwanted, unauthorized and unknown medical malpractice at the hands of the Defendant Medical Center and Defendant Jane Doe, resulting in the painful and debilitating swelling to Plaintiff's feet, the pain and muscular abnormalities in his legs, the pain in his back, the weakness and fatigue throughout his body, the episodic losses of consciousness, and an incalculable freight of emotion pain.

(Fourth Cause of Action)

46. Notwithstanding this Plaintiff's persistent and forceful objections to the illegal actions urged, taken and/or perpetuated by the aforesaid Defendants in numerical paragraphs eight (8) through thirty-nine (39), the Plaintiff was arbitrarily detained and subjected to unwanted examinations,

medications and treatment and subsequently fraudulently billed for those unwanted services and medications, contrary to 42 U.S.C. §1983; Amends. 4, 5, and 14 of the U. S. Constitution and Article 1, §8 of the Tennessee Constitution.

47. The illegal detention and forced treatment imposed by the Defendant Medical Center, have resulted in the Plaintiff receiving numerous billings and threats from debt collectors, intent on collecting payment for service charges generated by the Defendant Medical Center. These fraudulent charges and the attendant debt-collection efforts, caused by the Defendants' actions, have materially added to Plaintiff's emotional distress.

48. The Plaintiff reserves the right to amend this Complaint upon further discovery, to add party-defendants and to add and/or amend causes of action for any persons, accordingly.

RELIEF

WHEREFORE, the Plaintiff demands the following relief:

(a) Declaratory judgment against all Defendants upon violations of the Constitution and Laws of the United States and the Tennessee Constitution.

(b) Compensatory Damages against the Defendants, jointly and severally, in the amount of $10,000,000.00.

(c) Punitive damages against the Defendants, jointly and severally, in the amount of $20,000,000.00.

(d) All costs herein expended.

(e) A jury trial upon the merits.

(f) Reasonable attorney fees.

(g) All other just relief.

This the 28th day of February, 2005.

/s/ _____

BERLE E. GABBARD
3920 Chapman Highway
Knoxville, TN 37920
Phone: (865) 579-9142

PLAINTIFF, *pro se*

VERIFICATION

I hereby verify under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing facts are true and correct to the best of my knowledge, information and belief.

Executed February 28th, 2005

/s/ _____

BERLE E. GABBARD
PLAINTIFF